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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Situation of human rights defenders

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights defenders, Michel Forst, in accordance with Assembly resolutions 66/164 and 68/181 and Human Rights Council resolutions 16/5 and 25/18.

* A/72/150.



Report of the Special Rapporteur on the situation of human rights defenders

Summary

Notwithstanding the endorsement by the Human Rights Council of the Guiding Principles on Business and Human Rights (A/HRC/17/31, annex), there continues to be a worrying lack of accountability for the adverse human rights impacts of business activities. While human rights defenders seek to expose human rights abuses and actively contribute to sustainable and positive changes, they face a growing number of attacks from States and business-related actors. The Special Rapporteur urges States, business enterprises and investors to fulfil their obligation to respect and protect human rights defenders and to recognize and promote the shared interest of all actors in free, open and enabling environments that uphold human rights and the rule of law. New approaches are needed to tackle the situation and ensure that both preventive and reactive measures are adopted and implemented.

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I. Introduction

1. The work of human rights defenders in the field of business and human rights is crucial to protecting the land and the environment, securing just and safe conditions of work, combating corruption, respecting indigenous cultures and rights and achieving sustainable development.
2. The work of human rights defenders is also crucial to protecting the rights of freedom of expression and association, promoting gender equality and diversity and upholding the rule of law, conditions which are indispensable to the creation of an environment conducive to optimal working conditions for both business and civil society.
3. However, defending and promoting human rights in the context of business is dangerous, and even deadly, work. For defending human rights over profit, privilege and prejudice, ordinary people, communities, workers and trade unionists face stigmatization, criminalization, physical attacks and sometimes death. In many situations, such courageous people are being deprived of their most fundamental rights for the mere fact of their having opposed powerful interests. The Special Rapporteur is deeply concerned that these defenders are suffering attacks by business actors overpowering and silencing them, which exerts a chilling effect on their work. This worrying trend is compounded by a lack of State action in response to such attacks. This applies to States on whose territory attacks occur, as well as to the home States of the business entities involved in the attacks.
4. In his report to the General Assembly in 2015 (A/70/217), the Special Rapporteur identified defenders working on the issue of business and human rights as one of the most vulnerable groups of defenders and highlighted that business interests are often one of the key challenges they faced on the ground. In his previous report, in which he focused on the situation of environmental human rights defenders (A/71/281), the Rapporteur noted with concern the complicity of companies and business actors in various human rights violations against defenders and communities working to protect fundamental rights and freedoms.
5. In 2015 and 2016 alone, 450 such attacks were documented across the world. Of those attacks, 25 per cent were connected to companies headquartered in three countries only: Canada, China and the United States of America. This alarmingly high number is only the tip of the iceberg.¹ The real number of attacks is likely to be significantly higher for several reasons, including that, out of fear of retaliation, an increasing number of defenders refrain from reporting attacks. As more businesses, in particular those encroaching on the lands of indigenous peoples or other groups that have not agreed to their activities, are expanding their activities to remote and inaccessible areas, affected communities and individuals routinely find that they have few opportunities to draw attention to the threats they face for opposing such activities. Perhaps most significantly, the complexity of corporate structures in the globalized economy has created a number of layers and barriers to accessing information about business enterprises and their supply chains, making it challenging to reveal the links or operational connections between the business enterprises and the attacks. The attacks take place against a backdrop in which business enterprises already have significant influence over States and ensure that regulations, policies and investment agreements are framed in a way that promotes the profitability of their business, often to the detriment of human rights. Concomitant to this is the growing trend among States to adopt legislation curtailing the activities of civil society organizations.

¹ Business and Human Rights Resource Centre submission for the present report (June 2017).

6. In his thematic report to the Human Rights Council, the Special Rapporteur noted with apprehension that such legislation was in effect in 90 States and that an even higher number had taken measures to restrict freedoms of expression and opinion, peaceful assembly and association (A/HRC/31/55, para. 28). In July 2017, the number of States in which action had been taken to restrict the activities of civil society reached a record 106, which is more than half the number of States Members of the United Nations.² That combination — the excessive favouring of business interests and the increasing crackdowns on civil society — erodes social, political and economic stability and has a far-reaching impact, not only for defenders but for business enterprises and their ability to invest.³

II. Methodology

7. The Special Rapporteur engaged in consultations with defenders, Governments, business enterprises, investors, intergovernmental organizations and national human rights institutions to seek their perspectives on the various dimensions of the issue of defenders working on business and human rights. A questionnaire distributed to a broad range of stakeholders generated a large number of responses. Two consultations with defenders were hosted, in Geneva (17 May 2017) and Brussels (23 June 2017), followed by a meeting of experts, held in Geneva (4 July 2017). In Washington, D.C., the Rapporteur met with representatives of major international development banks and civil society working to address violations linked to the activities of such institutions.

8. The Special Rapporteur has also engaged directly with companies and their “home” and “host” States over alleged threats to human rights defenders, through a series of communications. He had the opportunity to engage with authorities during some of his working visits to Australia, Canada, Honduras and Mexico.

9. The Special Rapporteur expresses his gratitude to the many human rights defenders that have taken extraordinary risks to share their testimonies in the preparation of the present report. He also thanks States, business enterprises, investors and national human rights institutions for their submissions and is grateful for the assistance and instrumental support provided by the Centre for Applied Human Rights at the University of York.

10. Over the past 10 years, the Special Rapporteur mandate holder has sent 3,918 communications, of which approximately 105 (2.7 per cent) directly concerned defenders working in the context of business. Alleged perpetrators have included State (police and others) and non-State (transnational companies, private security firms, organized crime groups) actors. Most of those communications (over 51) were sent to Governments or companies owned or operating in the Americas, around 24 to parties in Asia, 8 to Europe and Central Asia, 6 to Africa and 4 to the Middle East and North Africa. Activities conducted by defenders occurred mostly within the electric power and other energy sectors and, in cases involving extractive and other industries operating within communities, often entire communities of several hundred to 20,000 persons were affected. About 28 per cent of the affected defenders were women and most of the violations referred to killings and attempted assassinations, followed by judicial harassment, intimidations and threats.

11. The Special Rapporteur intends to increase the number of communications addressed to companies in the coming months.

² See CIVICUS, *State of Civil Society Watch Report*, June 2017.

³ World Economic Forum, *The Global Risks Report 2017*, p. 29.

III. Who are the human rights defenders working on business and human rights?

12. The term human rights defender refers to individuals or groups that, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights.⁴ Defenders are, above all, identified by what they do and characterized by the actions they take to protect human rights. Their right to exercise such fundamental rights and freedoms as the right to peaceful assembly and association, the right to participate in public affairs, and the freedom of expression and opinion are firmly anchored in the international system of human rights.

13. The Special Rapporteur adopts a broad and inclusive definition of defenders working on business and human rights, including affected communities and individuals, members of the media, lawyers, judges and academics. Defenders working on business and human rights may also be government officials and civil servants or members of the private sector, including company employees such as trade unionists and whistle-blowers. Human rights defenders are often ordinary people living in remote areas, who may not even be aware that they are acting as human rights defenders (A/71/281, para. 8). What members of this broad and diverse group have in common is the exercise of peaceful activities to address adverse business-related human rights impacts and seeking remedy.

14. Human rights defenders play a critical role in fostering corporate respect for human rights. Through their work, they can help to bring to the attention of States and business enterprises business-related impacts on human rights, address inconsistencies in the domestic legal and policy frameworks that may contribute to such impacts and support affected communities and individuals in seeking remedy where adverse human rights impacts have occurred.

15. Their important work notwithstanding, defenders are increasingly subject to attacks by States and business-enterprises. Such attacks have taken place in all sectors and all regions. Based on the 450 cases documented by the Business and Human Rights Resource Centre in 2015 and 2016,⁵ the most common form of attack is criminalization, followed by killings, intimidation and threats.⁶ More than 52 per cent of the documented attacks took place in Latin America: Guatemala (10 per cent), Colombia (10 per cent), Mexico (9 per cent), Brazil (9 per cent), Peru (8 per cent) and Honduras (6 per cent).⁷

16. Companies belonging to land-consuming industries, such as mining, agribusiness, oil, gas and coal and dam construction, remain the most dangerous for defenders (see A/71/281). However, defenders working to address human rights violations in other sectors, such as finance, information and communications technology and garment manufacturing, are not immune to threats and retaliation. Attacks have been reported in all sectors and regions, and the Special Rapporteur continues to receive credible allegations about many attacks against defenders that have sought to address human rights violations relating to taxation and corruption.

17. The Special Rapporteur was appalled by the high number of attacks and threats facing defenders on the ground. Judicial harassment and criminalization are among the most common forms of attacks to silence opposition to business-related

⁴ See General Assembly resolution 53/144 on the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

⁵ Business and Human Rights Resource Centre submission to the present report (June 2017).

⁶ Ibid.

⁷ Ibid.

projects. Many testimonies unveiled the complicity of States, which tended to pursue cases brought by businesses against human rights defenders while ignoring cases reported by defenders against businesses, highlighting the economic and political power imbalance between corporate actors and affected communities whose members often struggle to dedicate resources, time and energy to unjust trials.

18. Killings and physical attacks disproportionately affect those engaged in the defence and promotion of environmental rights.⁸ According to the most recent report of Global Witness, at least 200 land and environmental rights defenders were murdered in 2016.⁹ Companies have been reportedly using State forces, private security groups or organized crime to defend locations of economic interest and target human rights defenders. The Special Rapporteur is extremely concerned by the growing tendency worldwide for public forces to have a dual functionality. Memorandums of understanding between companies and police forces often contribute to the blurring of limits between public and private security, a situation in which the police become the asset of private interests and fail to protect local communities. Some of the specific constraints faced by defenders working in the sphere of business include the immense disproportionality between the legal, logistical, defensive and financial resources available to defenders compared with those of companies. Defenders also fall victim to a “divide and rule” policy, whereby companies use coercive methods that turn workers against one another by creating tensions within the workforce and turn local communities, groups and trade union members against the very defenders who are defending their rights. Companies achieve this by offering, inter alia, financial and other economic incentives and promises of job security and economic well-being and by claiming that the defenders wish to deprive them of this. In the long-term, such strategies result in the gradual deterioration of the social fabric of entire communities.

19. Women human rights defenders are particularly at risk when leading the opposition to companies and reporting human rights abuses. They are targeted both as human rights defenders but also because they are women. Women human rights defenders are often at the forefront of human rights battles, partly because they are directly affected by human rights violations and because they challenge companies’ power and deeply rooted patriarchy. In a recent report on women confronting extractive industries, the Association for Women’s Rights in Development highlighted the threats, risks and violence, including criminalization, stigmatization, sexual abuse, intimidation, smear campaigns and reprisals faced by women human rights defenders as a result of their human rights commitment and their gender identity.¹⁰ The threats faced by women are often extended to their families. Companies encroach upon the well-being and livelihoods of the families of women human rights defenders and members of their communities and their neighbourhoods and exploit traditional gender roles in communities through intimidation — often by bribing and sending mostly male workers to their female colleagues’ homes — and limiting their public participation in the defence of human rights.

20. Human rights defenders from indigenous communities and rural and isolated areas are also targeted when they have documented abuses by companies or another company in the relevant supply chains, including suppliers, manufacturers and retailers. In many cases, their advocacy is a direct consequence of attacks led

⁸ Global Witness, *Defenders of the Earth: Global killings and environmental defenders in 2016*.

⁹ Ibid.

¹⁰ Association for Women’s Rights in Development, “Women human rights defenders confronting extractive industries”. Available from www.awid.org/publications/women-human-rights-defenders-confronting-extractive-industries.

against their very livelihood. Owing to geographical isolation or lack of political and economic capital or because they belong to groups that have suffered social marginalization, these defenders can be more vulnerable to threats and attacks. Perpetrators also develop a range of actions that often seek to disarticulate collective struggles through "divide and rule" strategies, which can be particularly difficult for indigenous defenders, who may not be proficient in the official State language of the country in which they live and, in some cases, may not even be in possession of identity documents. This creates additional layers of oppression whereby indigenous defenders find it more difficult to articulate their rights, because they do not have a proper legal status in their countries. Other testimonies of defenders and civil society organizations highlight the growing tensions between local communities and companies' employees who accuse human rights defenders of being a threat to the protection of their work.

21. The extended study of the cases that have been submitted to the Special Rapporteur mandate holder provide evidence that there is a profound crisis linked to the imposition of models of development that seem to favour short-term profits and commodification over the needs and aspirations of local populations. Conflicts around labour rights, land grabbing or the exploitation of natural resources are doomed to worsen if there is no reassessment of economic and development models that deprive entire communities of their fundamental rights. Pitted against the dominant model of development, defenders are increasingly under pressure for denouncing corporate abuses and proposing alternative economic and development models; this pressure often takes the form of narratives that portray them as "anti-development". These narratives, disseminated through State-owned media and social networks, often reveal the lack of understanding of the positive role that human rights defenders play in safeguarding democratic values and stability.

22. Governments and businesses could prevent many of the threats and attacks against defenders, if they were to do more to recognize the legitimacy and utility of free expression and dissent and to guarantee the meaningful participation of civil society stakeholders in decisions relating to business which affect them.

23. This analysis is particularly true for land and environmental defenders, where the roots of conflict are often found in the exclusion of potentially affected communities from decisions regarding their land and natural resources. Only by guaranteeing the right of such communities to give or withhold their free, prior and informed consent, as foreseen in international agreements, can these origins of conflict be avoided. Unfortunately, consultations about business projects often take place only once key decisions have already been taken and are used simply to stage "approval". In addition, false documentation is sometimes used to illegally dispossess defenders of their land, which facilitates the selling of the land to businesses.

IV. Normative framework

24. The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms is addressed not only to States and human rights defenders but to all "individuals, groups and organs of society". In article 10 of the Declaration, it is clearly stated that "no one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms". Therefore, non-State actors, such as companies, are included in its scope setting out the responsibility to promote and respect the rights of defenders.

25. It is well established that business enterprises can have significant impact on the enjoyment of human rights, and global trade and investment can serve as an important vehicle to economic growth, which, if not skewed to favour the few, can provide financial means for the fulfilment of human rights. Companies can, and do, infringe on human rights, in cases where, willingly or unwillingly, they have not paid attention to the actual or potential risks their activities can have on human rights.

26. In recognition of these risks, and in an effort to address the regulatory gap between corporate influence and accountability, the Human Rights Council endorsed the Guiding Principles on Business and Human Rights (A/HRC/17/31, annex) in June 2011.

27. The Guiding Principles rest on three distinct but mutually reinforcing pillars: the duty of States to protect their citizens from human rights abuses by third parties, an independent corporate responsibility to respect human rights, and the need for greater access for victims of business-related abuse to effective remedy. The Principles apply to "all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure" (*ibid.*, General principles).

28. It is recognized in the Guiding Principles that defenders play an important role as watchdogs, advocates and facilitators and the heightened risks that they may face as a result. Principle 18 clarifies that companies should consult human rights defenders as an important expert resource, and the commentary to Principle 26¹¹ specifies that States should ensure that the legitimate activities of defenders are not obstructed.

29. International organizations, Governments and business enterprises have drawn extensively from the Guiding Principles in their standard-setting and related guidance. They were incorporated in the 2011 revision of the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises and reflected in the revisions to the International Labour Organization Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, which provides a key international reference for ensuring respect for labour rights across the operations of transnational businesses. A number of countries have passed legislation requiring companies domiciled in their territory and/or jurisdiction to identify and prevent infringements on human rights. Similarly, States have issued national action plans, or have committed to doing so, with a view to giving practical effect to the Guiding Principles.¹²

30. Although the Special Rapporteur is encouraged by these initiatives, the reality on the ground paints a troublesome picture. Defenders operate in ever more hostile environments and are subjected to an increasing number of attacks, often carried out or condoned by State actors and vested business enterprises. It is of particular concern that, of the initiatives the Rapporteur has come across, most, if not all, do not consistently seek to address the situation of defenders or how to ensure their protection.

31. In recognition of this gap, recent initiatives have sought to address the situation of defenders working on business and human rights. Civil society organizations have highlighted trends and challenges they face on the ground. The

¹¹ Special Rapporteur on the situation of human rights defenders, "Commentary to the Declaration on human rights defenders" (2011). Available from www.ohchr.org/EN/Issues/SRHRDefenders/Pages/CommentarytotheDeclarationonHumanRightsDefenders.aspx.

¹² The Special Rapporteur's observations on national action plans are elaborated in an addendum to a supplementary extended report on the subject.

Working Group on the issue of human rights and transnational corporations and other business enterprises, in consultation with the Special Rapporteur, has recently engaged in a project to develop guidelines for companies on better respecting human rights defenders.

32. At the international level, ongoing negotiations for a legally binding treaty on State and business conduct with regard to human rights may serve to close some of the gaps in consideration of defenders in the global and national policy responses to the Guiding Principles. The Special Rapporteur welcomes the initiative and considers it essential that defenders take part in this process. He calls upon States to facilitate their participation in the sessions of the open-ended working group and to consider in particular including defenders in their delegations. He invites the open-ended working group to host a dedicated session on the role of human rights defenders and how to best ensure their protection within the framework of the binding treaty.

V. Key stakeholders — obligations, challenges and good practices

A. States

Creating an enabling environment

33. States have a duty to protect human rights, including protecting against abuses by business enterprises and other third parties (A/HRC/17/31, Guiding Principle 1). To meet this duty, States should enforce laws that are aimed at, or that would have the effect of, requiring business enterprises to respect human rights (*ibid.*, Guiding Principle 3 (a)). In doing so, States should clearly set the expectation that all businesses domiciled in their territory and/or jurisdiction should respect human rights (*ibid.*, Guiding Principle 2). The State duty to protect, as noted by the Committee on Economic, Social and Cultural Rights, does not end at national borders.¹³ Accordingly, States should regulate and monitor corporations across national borders to protect individuals and communities from the negative impacts of their activities.¹⁴

34. The State duty to protect against human rights abuses entails ensuring that defenders are not subjected to attacks from State actors or third parties for their activities. Respect and support for the work of defenders are essential to fulfilling the duty to protect and clearly setting the expectation that business enterprises — at home and elsewhere — should respect human rights. Discharging this duty requires that States foster an environment that is supportive of the human rights that are fundamental to the activities and safety of defenders, including the freedom of peaceful assembly and association and freedom of opinion and expression, and their right to protest, access funding and develop and discuss new human rights ideas, as well as their right to be protected and to effective remedy.¹⁵ A key element of an enabling environment for defenders is the existence of laws and provisions at all levels that reflect these rights, that protect, support and empower defenders, and that are in compliance with international human rights law and standards (A/HRC/25/55, para. 62).

¹³ Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities.

¹⁴ *Ibid.*

¹⁵ Special Rapporteur on the situation of human rights defenders, "Commentary to the Declaration on human rights defenders" (2011), p. 5.

35. The Special Rapporteur continues to find, across the globe, that regulatory frameworks are absent or deficient. He has continued to raise concerns about national laws that fall short of meeting international human rights standards, including: laws governing the registration, functioning and funding of associations; defamation and blasphemy legislation that stifles the freedom of expression and opinion; labour and employment laws restricting the activities of trade unions and the enjoyment of other fundamental rights at work; restrictions on access to information of public interest; laws relating to the Internet and other information and communications technology services; laws on public morale; and anti-terrorism and national security legislation.

36. A number of States have adopted laws that address the human rights impacts of business enterprises domiciled and/or under their jurisdiction. These laws cover either the full spectrum of human rights, such as the Duty of Care Law in France¹⁶ and the Global Magnitsky Human Rights Accountability Act¹⁷ and the Dodd-Frank Wall Street Reform and Consumer Protection Act¹⁸ in the United States, or only partially, such as the Modern Slavery Act 2015 in the United Kingdom of Great Britain and Northern Ireland.¹⁹

37. The Special Rapporteur is encouraged by the adoption of laws that make human rights due diligence a legal requirement for companies and believes that these are likely to be more effective in addressing corporate conduct than voluntary reporting systems. As long as other laws, policies and agreements can be relied on to obstruct the work of defenders, however, such as laws facilitating strategic lawsuits against public participation, legislation seeking to regulate corporate human rights impacts will not be able to achieve its stated intent.

38. To evaluate the realistic possibilities that defenders have for addressing corporate human rights abuses, one point of departure is the question of access to information, a matter which has become highly contentious, with conflicting points of view about the scope of the State duty and the responsibility of the business to provide information about their operations and business relationships. The Special Rapporteur considers that effectively addressing human rights abuses caused by or linked to business enterprises is contingent upon access to information. He is deeply concerned at the many appeals of defenders indicating that obtaining information that is crucial for revealing direct links or operational connections between companies and violations remains a major challenge and that companies seek to block public access to information by arguing that doing so would force them to disclose trade secrets. The Special Rapporteur is concerned that the absence of legislation requiring companies to publicly disclose the origins of imported products makes it very difficult, if not impossible, to address the human rights abuses taking place at different tiers of the supply chain. Currently, information relating to trading parties that is disclosed is generally not made available to the public within the European Union, including in response to specific requests from defenders in cases in which there are well-founded reasons to suspect abuse of workers' rights.

39. States have a positive duty to facilitate a maximum level of public access to information, in particular when such information is necessary in order to unveil human rights violations. Although it is recognized in the International Covenant on Civil and Political Rights that there may be legitimate grounds for States to restrict

¹⁶ France, Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre.

¹⁷ United States, Global Magnitsky Human Rights Accountability Act (2016).

¹⁸ United States, Dodd-Frank Wall Street Reform and Consumer Protection Act (2010).

¹⁹ United Kingdom, Modern Slavery Act 2015.

freedom of expression,²⁰ the Human Rights Committee has emphasized that any limitations to public access to information must be applied in such a way that they do not jeopardize the right itself.²¹ Certain matters should be presumed to be in the public interest, including human rights violations and corruption (A/70/361, para. 10).

40. For State decisions to be legitimate, they should be reached through democratic processes in which the interests of the public are well represented. Consultation with defenders is crucial. However, the lack of adequate implementation of the State duty to consult is one of the most frequently reported challenges, in particular in cases of decisions relating to trade and finance, such as negotiations over investment treaties or lucrative deals sealed with business enterprises that are likely to have far-reaching impacts on human rights. Excluding defenders from such consultations manifests not only a gross deficit of democratic legitimacy, but also fails to appreciate the invaluable knowledge that they bring to the negotiating table, namely an understanding of human rights and how the decisions may undermine compliance with the relevant State's obligations.

Protecting defenders

41. The protective thrust of the Guiding Principles is that States should take appropriate steps to prevent, investigate, punish and redress human rights abuses. The State duty to protect is also reflected in the Declaration on human rights defenders.

42. The Special Rapporteur continues to receive credible allegations that State and non-State actors, including business enterprises and associated private security forces, are involved in subjecting defenders to stigmatization and judicial and other forms of harassment. Such stigmatization makes defenders more vulnerable to attacks, not only by State actors but also by business enterprises and associated actors. States should publicly acknowledge the importance of the work of defenders and clearly communicate to the business community that attacks against defenders will not be tolerated. The Special Rapporteur notes with appreciation that, in Canada, the recently adopted national guidelines on human rights defenders recognize that Canadian business enterprises have an important role to play with respect to human rights defenders at home and abroad.²²

43. In many cases, a growing number of defenders that have sought to address labour rights violations, corruption, lack of transparency and other issues pertinent to business and human rights have been charged with and jailed for a range of criminal offences, including "misleading propaganda", "infringement of State security" and "public unrest". Similarly, an increasing number of business enterprises are pursuing retaliatory lawsuits, commonly under the guise of strategic lawsuits against public participation, against defenders. Such harassment takes a substantial financial and psychological toll on defenders and has a chilling effect, ultimately undermining their capacity and willingness to bring human rights abuses to light. Moreover, defenders are often denied access to State legal aid when confronted with fending off lengthy and costly lawsuits.

44. Judicial harassment against defenders is facilitated by State judicial mechanisms in both home and host States and, as such, it occurs with State complicity or disregard. The Human Rights Committee, in its general comment

²⁰ International Covenant on Civil and Political Rights, article 19 (3).

²¹ Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, para. 21.

²² Canada, "Voices at risk: guidelines on supporting human rights defenders". Available from http://international.gc.ca/world-monde/issues_development-enjeux_developpement/human_rights-droits_homme/rights_defenders_guide_defenseurs_droits.aspx?lang=eng.

No. 34 (2011) on the freedoms of opinion and expression, called upon States to be proactive in putting into place “effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression” and highlighted that restrictions on freedom of expression and opinion may never be invoked as a justification for the muzzling of any advocacy of democratic tenets and human rights.²³

45. Systematic inadequacies in ensuring the protection of defenders working on business and human rights also continue to be reported from across the globe. Ill-designed or poorly implemented State protection systems, or a complete lack of protection mechanisms, have led to an alarming situation in which many defenders find themselves with no protection at all. Many reports contain descriptions of the magnitude of attacks that defenders are subject to when seeking access to grievance mechanisms or supporting investigations conducted by such mechanisms, including those associated with international financial institutions.

46. Regrettably, the corporate capture of State authorities appears to compound the inadequate protection of defenders in many parts of the world. Corporate capture has entailed relying on State forces, such as the gendarmerie, to “defend” sites of economic significance from protests, typically mobilized by the State to defend the promise of financial gains from investments. Further research is needed to assess the factors that influence the effectiveness of national protection mechanisms and to analyse how defenders can work with States to develop these mechanisms, in particular in contexts where business entities are the main perpetrators of abuses. Laws and policies aiming at the recognition and protection of defenders should contain specific provisions to protect defenders who challenge businesses. States should work with defenders to define protective measures that could have a specific impact upon business.

Ensuring access to effective remedy

47. Ensuring access to effective remedy for victims is a central part of the State duty to protect (A/HRC/17/31, annex, Guiding Principles 25-31). Defenders seeking to obtain remedy continue to face multiple challenges, including fragmented, poorly designed or incomplete legal regimes; lack of legal development; lack of awareness of the scope and operation of regimes; structural complexities within business enterprises; problems in gaining access to sufficient funding for private law claims; and lack of enforcement (A/HRC/32/19, para. 4); as well as the significant influence that companies are reported to exercise over the judicial process.

48. Particular concern has been expressed to the Special Rapporteur regarding the national contact points in States that adhere to the OECD Guidelines for Multinational Enterprises. Accordingly, a significant number of national contact points are non-functional and, where they exist, have not been able to deliver remedy to victims or ensure their safety throughout the process. Compounding the problem is a lack of understanding by national contact points of the Guidelines and of business and human rights more generally. The absence of clear guidelines on how to ensure the safety of potential complainants has also put defenders at significant risk. The Rapporteur invites adhering States to review the effectiveness of their national contact points, in close consultation with defenders. He will continue to monitor developments in this regard and looks forward to the forthcoming peer reviews of several national contact points.

49. Challenges in seeking effective remedy are further exacerbated in cross-border cases, a situation which is most worrisome considering that extraterritorial avenues

²³ Human Rights Committee, general comment No. 34, para. 23.

are often the only option for defenders seeking remedy for corporate human rights abuses, given that many domestic legal regimes are geared towards business activities and impacts within their territory (A/HRC/32/19, para. 5). Extraterritorial judicial proceedings against companies are lengthy, costly and rife with obstacles, including common restrictions by courts in countries where the companies subject to the lawsuits are headquartered. Taken together, these challenges have led to a situation in which defenders rarely have access to effective redress mechanisms or, when they do, accountability and remedy is elusive.

50. For States to ensure effective remedy, the first step is to promptly and impartially investigate attacks against defenders. This aspect appears to be largely challenged or grossly ignored. The close relationships between private companies and organized crime and the fact that business activities, in particular in the mining, agribusiness, logging, oil and gas extraction and transportation sectors, often take place in conflict-affected areas pose challenges to the effective investigation of killings of defenders and the punishment of perpetrators.

51. Combating impunity implies conducting serious, independent and transparent investigations to identify and prosecute perpetrators and to ensure that adequate reparations are made. Although the primary responsibility to investigate attacks against defenders rests upon the State in which the attacks were carried out, the home States of companies also have an important role to play, in particular where the host State is unable, or unwilling, to investigate the attacks. Where attacks have been carried out against defenders in host States, home States should use all avenues possible to advocate for an independent, impartial and transparent investigation and should provide financial and technical support to such an investigation.

52. Many defenders also point to the high degree of impunity for perpetrators and States' reluctance to investigate attacks, let alone sanction the actors that have committed them. The failure to take action, through penalties or sanctions, demonstrates serious disregard for the work and safety of defenders and human rights broadly. Far too often, States are quick to punish defenders for revealing corporate abuse, but are unwilling to investigate, prosecute and punish business enterprises for committing serious, often violent, attacks against defenders. Some Governments have enacted policies or national action plans on business and human rights that establish links between an individual company's record of conducting human rights due diligence and the granting of government instruments of foreign trade and investment promotion,²⁴ mirroring the option provided by the Guiding Principles with regard to businesses operating in conflict-affected areas. Such financial sanctions should be imposed on companies whose track records show that they have been linked to attacks against defenders and have shown unwillingness to cooperate to address the situation. A prerequisite for applying this type of financial consequence is that the State can investigate the company and its activities, for example by mandating the State's official representation to investigate and regularly report to relevant authorities in the home State.

53. Recent legal developments may also serve to increase access to remedy for defenders working on business and human rights. For example, States have increasingly relied on criminal law to hold companies to account for criminal acts,²⁵

²⁴ Germany, "National action plan on business and human rights" (December 2016).

²⁵ For example, the United Kingdom (DJ Houghton lawsuit (concerning the trafficking of Lithuanian migrants)); France (Amesys lawsuit (concerning Libya)); Auchan lawsuit (concerning garment factories in Bangladesh)); Germany (Danzer Group and SIFORCO lawsuit (concerning the Democratic Republic of the Congo)); Lahmeyer lawsuit (concerning a dam construction in northern Sudan)); Switzerland (Nestlé lawsuit (concerning Colombia)); and Qatar (Villaggio Mall lawsuit (concerning a fatal fire)).

and courts in some jurisdictions have progressed to hear civil claims over the responsibility of companies for abuses against defenders.²⁶

B. Business enterprises

54. Attacks against defenders are committed on a daily basis by business enterprises (see A/65/223). More often, however, business enterprises are linked to attacks by virtue of their business relationships. Whether the link is direct or indirect, all business enterprises have an independent responsibility to ensure that defenders can effectively and safely address the human rights impacts linked to their operations.

55. The responsibility of a business to respect human rights is affirmed in the Guiding Principles and the Declaration on human rights defenders (A/HRC/17/31, annex, Guiding Principle 10). This responsibility means acting with due diligence to avoid infringing on the rights of others and to address adverse impacts linked to the company's own business activities and its business relationships. It exists independently of a State's abilities and willingness to fulfil its own human rights obligations and over and above compliance with national laws and regulations protecting human rights.²⁷ The Guiding Principles apply to all businesses, regardless of their size, sector, location, ownership and the geographic scope of their activities, and they apply in all situations (A/HRC/17/31, annex, General Principles). Since their adoption in 2011, the Guiding Principles have gained significant traction in the business community.

56. The rise of companies from non-OECD economies as investors and capital exporters has been cause for significant concern to defenders working on business and human rights. While such investment brings with it numerous potential benefits, it also comes with risks to human rights. Many companies headquartered in, or under the jurisdiction of, non-OECD countries have neither joined international initiatives for corporate social responsibility nor been put to the test of corporate accountability. Cognizant of social and environmental risk, these companies have begun to adopt environmental and social policies and guidelines for their overseas investments, which correspond to the Guiding Principles to varying degrees. However, many of these policies and guidelines are not well publicized, and the extent to which they are followed is unknown. How companies from these countries view and engage with defenders is also largely influenced by their domestic contexts, where meaningful civil society engagement is regrettably more the exception than the norm.

A positive duty: fostering a safe and enabling environment for defenders

57. Business enterprises also have an important role to play in ensuring an enabling environment for defenders. Through their business decisions, companies across virtually all sectors can undermine a safe and enabling environment for defenders. Such challenges have arisen when global corporate brands have made investment and sourcing decisions contributing to global pressures on producer prices and delivery times, resulting in downward pressure that has an impact on the

²⁶ Courts in Canada have heard cases such as Tahoe Resources lawsuit (concerning Guatemala); Nevsun lawsuit (concerning the Bisha mine in Eritrea); BP lawsuits (concerning Colombia); and Oil Palm Uganda lawsuit (concerning land grabs in Uganda). In May 2017, a counter-suit was presented against Natural Fruits in Thailand for its criminal proceedings against human rights defender Andy Hall.

²⁷ Special Rapporteur on the situation of human rights defenders, "Commentary to the Declaration on human rights defenders" (2011).

rights of workers participating in the chains. Similarly, in the information technology sector, telecommunications companies are responding to State requests for Internet shutdowns and surveillance, thereby potentially eroding the right to freedom of opinion and expression. Such acts, or neglecting to act, result in a rapidly deteriorating environment for defenders on a global scale.

58. The Special Rapporteur considers that the responsibility of businesses to respect human rights not only entails a negative duty to refrain from violating the rights of others, but also a positive obligation to support a safe and enabling environment for human rights defenders in the countries in which they are operating. Discharging this duty requires consultation with defenders in order to understand the issues at stake and the shortcomings that impede their work.

59. The human rights and business case for this positive duty is straightforward; if companies operate in an environment in which civic freedoms are under attack and dissent is routinely punished, then frank and open dialogue with stakeholders is no longer possible. As a result, due diligence will not be likely to reflect or address human rights risks and impacts, damaging not only affected communities but also the long-term sustainability of business activities. Successful conduct of business relies on stability — sound institutions, the smooth functioning of justice and public confidence in their personal safety. Such stability is hard to come by, if not impossible, when civil society is under attack and human rights are ignored. A functioning civil society hinges on respect for freedom of expression and association and free access to remedy and redress mechanisms and so does the business sector.²⁸

60. Business enterprises should assess the status of civic freedoms and the situation of defenders and engage with host States regarding their findings. Through such engagement, authorities will be made aware of problems and that there is support from the business for introducing changes to strengthen the protection of defenders. A number of global companies across different sectors are already moving in that direction, such as through the Ranking Digital Rights initiative, in which several companies in the information and communications sector are working together with civil society to meet the global standards for respect for freedom of expression and privacy. Also in the information and communications technology sector, the company-led Telecommunications Industry Dialogue and the multi-stakeholder Global Network Initiative are seeking to find common ground for how to anticipate and respond to requests for Internet shutdown, including transparency on when and where such requests occur.

Human rights policy statements

61. In the Guiding Principles, business enterprises are encouraged to demonstrate their commitment to respect human rights through a statement of policy (A/HRC/17/31, annex, Guiding Principle 16). Although a growing number of companies have adopted human rights policy statements, few pay particular attention to the situation of defenders.

62. The adoption of a human rights policy statement is only a first step towards fostering corporate respect for human rights, but a policy statement on human rights defenders is an important component for embedding company responsibility to respect the rights of defenders and to ensure that business activities and relationships do not restrict, impair or otherwise interfere with their legitimate work.

²⁸ Lazala, Mauricio, "Civic rights are under attack. Here's why the business world should care", article prepared for the World Economic Forum on Latin America (27 March 2017).

63. To effectively satisfy the corporate responsibility to respect human rights, companies should ensure that their policy commitment on human rights reflects the role that defenders can play in bringing human rights issues to their attention and address the risks they face in so doing. A proactive commitment of this kind, whether contained in a stand-alone policy or integrated into a broader human rights strategy, should set the baseline expectation that the company will not seek to restrict, impair or otherwise interfere with the legitimate work of defenders and that threats, intimidation or physical and legal attacks against defenders will not be accepted. A statement of policy on defenders should be informed by internal and external expertise and be the result of a collaborative and open consultation with defenders (A/HRC/17/31, annex, Guiding Principle 16). It should be approved at the most senior level of the business enterprise and clearly communicated to all business partners with the requirement that they make the same commitment (*ibid.*).

Human rights due diligence

64. A key element of the Guiding Principles is the requirement for companies to conduct human rights due diligence through which business enterprises may be able to identify whether they are involved in actual or potential adverse impacts on human rights and human rights defenders and in what ways.

65. Understanding the context is a key part of effectively addressing human rights risks and impacts (A/HRC/17/31, annex, Guiding Principle 18). Guiding Principle 18 notes that the process of assessing adverse human rights impacts should draw upon human rights expertise. Defenders have valuable insight into how a company's products, operations and services enhance people's lives or harm people and whether the company's human rights policy and approach is working. They have a key role to play in the due diligence process and should be involved at all stages of it.

66. The corporate responsibility to respect defenders has an internal dimension, applying as it does to employees associated with the company, including whistle-blowers, and an external one, where impacts are felt and communicated by affected communities and individuals. While a growing number of companies are addressing the situation of defenders in their labour force, this is still an area for much improvement. As indicated in the Know the Chain ranking for 2016, the "worker voice" theme, which measures the extent to which companies proactively communicate with workers, enables freedom of association and ensures access to remedy, was rated among the lowest, in particular in the food and beverage and apparel and manufacturing industries.²⁹ A proper due diligence process should establish the requirements for respecting the rights of defenders and their safety and ensure that they are reflected in contractual codes.

Disengagement

67. The prospect and process of disengagement from a business relationship when serious human rights abuses are brought to light is a matter that both defenders and enterprises have raised as a major challenge. The Guiding Principles refer to disengagement, the process or act of withdrawing from a business relationship, as an option for addressing adverse human rights impacts,³⁰ however, key questions about when and how companies should consider terminating relationships and the possible further impacts that this may have on defenders remain unanswered.

²⁹ See the Know the Chain benchmarks for 2016. Available from <https://knowthechain.org/benchmarks>.

³⁰ Special Rapporteur on the situation of human rights defenders, "Commentary to the Declaration on human rights defenders" (2011), commentary to Guiding Principle 19.

68. Defenders express concern that the usual response by companies when issues in their supply chains surface is to disengage, but just moving on to the next supplier can be very harmful to defenders and the communities that they are trying to support and empower. Part of the problem appears to be that business enterprises do not sufficiently employ the prospect of disengagement at an early stage of the business relationship, which reduces their ability to effectively address adverse impacts through leverage over business partners when problems emerge.³¹ Having the prospect of disengagement on the table from the beginning of, and throughout, the business relationship can potentially increase the company's chances of successfully addressing adverse impacts without having to completely disengage from the relationship. As with the entire due diligence process, defenders should be meaningfully involved in the decision-making process around disengagement.

69. A related question is that of company responsibility for remediating adverse human rights impacts and supporting defenders after it has disengaged. It is affirmed in the Guiding Principles that if a company contributes to an adverse impact, it is responsible for remediating the impact to the extent of its contribution (A/HRC/17/31, annex, Guiding Principle 22). The Special Rapporteur considers that the company's responsibility to remediate impacts to which it contributed remains even if the company disengages from the relationship through which it contributed to the impact. The responsibility for working with defenders to address any outstanding issues and ensuring their security while doing so does not automatically end when the business relationship does.

Access to remedy

70. Access to remedy for defenders hinges on companies' taking responsibility for acts or omissions that lead to human rights violations. Regrettably, assuming responsibility seems rarely to occur. The Special Rapporteur continues to receive credible allegations that companies are refusing to cooperate with proceedings of judicial and non-judicial grievance mechanisms and, what is more, are engaging in retaliatory lawsuits against defenders for having unveiled corporate human rights abuses.

71. Guiding Principle 22 establishes that, where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes. To facilitate remedy, the company should have in place agreed processes for the remediation of adverse human rights impacts arising in any area of operations (A/HRC/17/31, annex). In certain cases, it may not be appropriate for remediation to be provided by the enterprise, including where this is not desired by affected communities and individuals; in others, the company will not recognize its liability. In such instances, defenders have often sought to access other State-based judicial or non-judicial mechanisms in both home and host States, such as courts, national contact points in States that are adherents to the OECD Guidelines for Multinational Enterprises, national human rights institutions or accountability mechanisms associated with lending institutions.

72. In many instances, company-level grievance mechanisms are not in place or are ineffective and unable to ensure the safety of those that seek to access them. At the other end of the spectrum, a number of companies have brought to the attention of the Special Rapporteur creative ways of supporting more traditional company grievance mechanisms, which is particularly useful when the safety of defenders is at stake.

³¹ Centre for Research on Multinational Corporations, "Should I stay or should I go — exploring the role of disengagement in human rights due diligence" (2016).

C. Investors

73. Through their financing and technical support, a complex range of public and private institutions continue to be implicated in attacks against defenders — as amply documented by civil society organizations and brought to the attention of the Special Rapporteur through the communications procedure.

74. Those institutions have increasingly been linked to violations in connection with their projects, often as a result of poor due diligence practices and inattention to social risk. The safeguard policies adopted by major development banks serve as the default floor for other investors and, as such, set the tone for human rights defenders and stakeholder engagement in investment lending in general. However, all investors, whatever their governance structure and activities may be, are business enterprises in the meaning provided by the Guiding Principles and have an independent responsibility to respect human rights.

75. The killing of Berta Cáceres and other defenders reflects the urgency for investors to find effective processes to identify whether and where there could be threats to opponents of projects before investment decisions are made and to develop ways of mitigating those risks. Whereas it is ultimately the State that bears the bulk of the responsibility for safeguarding human rights and, as such, must be held accountable, financing development projects must show that they take human rights risks seriously and are not part of the problem. The broader trends towards repression have profound impacts for investors and should be met with meaningful action to support an enabling environment for participation and accountability.

76. The activities of development lending institutions are governed by a set of environmental and social safeguards, but most of these safeguards do not reflect a firm commitment to not infringe on human rights and that an overwhelming majority of development finance institutions continue to maintain a hard and irrational line with regard to human rights, in particular insofar as their own due diligence is concerned.

77. The preference for new forms of lending has also stirred concern among defenders. Development money is increasingly being channelled through third parties, known as financial intermediaries and covering banks, insurance companies, leasing companies, microfinance institutions and private equity funds. The rationale is that lending expands the reach and positive development impacts, an assumption that hinges on financial intermediaries and their clients complying with the social and environmental safeguards of the lending institution. Independent evaluations, however, present a different picture: lenders have little knowledge about the end beneficiaries or on whether their activities have a positive impact on people and the environment.³² Numerous reports have shown the damage that financial intermediary lending has had, including for the activities and safety of defenders.³³ Blended sources of funding and lending through financial intermediaries also pose serious challenges for defenders seeking accountability, given that complex and obscure funding arrangements make it difficult to know who is funding the project and overlapping safeguard requirements result in confusion regarding where remedy can be sought.

³² Office of the Compliance Advisor Ombudsman of the International Finance Corporation, "Audit Report on the Compliance Advisor Ombudsman Audit Sample of International Finance Corporation Investments in Third Party Financial Intermediaries" (October 2012).

³³ Oxfam International, "The suffering of others — the human cost of the International Finance Corporation's lending through financial intermediaries", issue brief (April 2015).

78. New lending institutions, including the Asian Infrastructure Investment Bank and the New Development Bank, have yet to demonstrate their ability to engage with defenders over project design, implementation and monitoring. Their respect for human rights may be challenged, however, by the lack of policy commitments to not infringe on human rights and of a requirement on the lender to exercise human rights due diligence; their favouring of national laws over international human rights; and their not yet operational grievance mechanisms. As “lean” institutions with scant human resources, compliance with safeguards and an open dialogue with defenders may also be at risk. Concern has been raised with the Special Rapporteur over the ownership of these institutions, because they were founded and are largely driven by Chinese interests. Time will tell whether the uneasy relationship between China and human rights defenders will be reproduced in the decision-making and operational activities of the banks.

79. The increasing availability of alternative funding sources through emerging development banks, coupled with demands from both clients and donors to be more efficient, has put significant pressure on traditional development lenders to increase both their volume and speed of lending. Regrettably, this appears to unfold through a substantive weakening of social and environmental safeguards. The recently revised safeguards of the World Bank — the industry standard-setter of safeguards in investment lending — are telling in that regard.³⁴ The revised standards will, in many respects, make it more difficult for the World Bank to ensure that civil freedoms are upheld and defenders respected. Of particular concern is the limited requirement for the World Bank to proactively seek and verify information provided by borrowers, including stakeholder engagement and consent, and to implement due diligence requirements on an ongoing basis. Excessively relying on borrowers to engage with affected stakeholders appears to be ill conceived, given the hostile climate in which defenders operate.

80. Inputs to the present report from development banks highlighted their limited ability to influence the businesses in which they invest. The Special Rapporteur considers that the challenge for development banks is not whether they can deal with human rights in projects, but how human rights risks can be addressed earlier in the project cycle, before serious damage is done. Traditional and emerging development banks should proactively address and show leadership in this regard. Early and ongoing due diligence should not be outsourced to borrowers and should involve defenders at all stages.

81. To address the situation of human rights defenders, several important levers of influence can be employed, such as investment criteria, including exclusion lists of countries and companies with extensive track records of threats and attacks against defenders, and contractual requirements for clients to ensure that defenders can safely and publicly air their grievances.

82. The Special Rapporteur encourages the process initiated at some development banks to explore ways of carrying out early warning screenings to better understand and respond to the risks to human rights defenders at an early stage in the consideration of potential investment opportunities. Existing risk-measuring assessments, such as the Systematic Operations Risk-Rating Tool of the World Bank, could be employed to consistently assess and monitor risks relating to civic space and defenders.

83. Development investors require varying degrees of on-site monitoring, including through visits by independent experts. On-site monitoring is an important component of human rights due diligence and should include human rights advisors

³⁴ World Bank, “Environmental and social framework” (August 2016).

with expertise on civic freedoms. Internal guidelines on defenders and the right to dissent could serve as an important benchmark. On-site monitoring should not be limited to high-risk projects, in particular given that both internal and external assessments of development finance institutions have indicated that projects are routinely classified as low-risk when facts are to the contrary.³⁵

84. Complaint mechanisms should be readily accessible to defenders. They should be independent from undue influence by the institutions' management and have human rights experts in their membership. The Special Rapporteur is encouraged by the practice employed by the Dutch development bank of including a human rights expert in the membership of its accountability mechanism.

85. Many reports indicate a growing number of attacks against defenders seeking to access the accountability mechanisms of international financial institutions.³⁶ The Special Rapporteur sought to engage in dialogue with representatives of some of those institutions. He appreciates that some grievance mechanisms, such as the Inspection Panel and the Compliance Advisor Ombudsman of the World Bank Group, have adopted internal guidelines for how to deal with threats against complainants, however, these do not compensate for the absence of consistent responses by the institutions themselves. Development lenders should closely monitor for reprisals and, should they occur, respond promptly and publicly, including by exercising leverage over Governments to investigate and hold to account anyone who uses force against protestors or threatens or physically attacks critics

VI. Conclusions and recommendations

A. Conclusions

86. As the situation of defenders working in the field of business and human rights deteriorates in many parts of the world, it is crucial to recall our collective responsibility to protect those who defend and promote fundamental rights and freedoms. It is high time that we recognized the positive role of defenders working in the field of business and human rights — their legitimacy, experience, expertise and valuable contributions. It is high time that States, business enterprises and investors reaffirm their respective obligations. Concrete measures should be taken to de-escalate conflicts and counter the narrative against human rights advocacy. At the same time, underlying root causes, such as power imbalance, commodification and corruption, should be tackled to ensure long-term changes and to implement international commitments, such as the Sustainable Development Goals.

87. Much of the business and human rights agenda, including the protection of defenders who document adverse impacts and take action, continues to depend heavily on what States are willing or reluctant to do. States cannot meet their duty to protect against human rights abuses within their territory and/or jurisdiction in the absence of a safe and enabling environment in which defenders can address corporate human rights abuses. Governments need to explore ways to ensure that there is policy coherence between their endorsement of the Guiding Principles and their domestic regulatory frameworks, the latter of which are far too often relied upon to obstruct the work of defenders that seek to address corporate abuse.

³⁵ Independent Evaluation Group, "Safeguards and sustainability policies in a changing world — an independent evaluation of World Bank Group experience" (2010).

³⁶ Human Rights Watch, "At your own risk — reprisals against critics of World Bank Group projects" (June 2015).

88. Although States hold the main responsibility for ensuring an enabling environment for defenders, business enterprises also have an important role to play. Through their investment and sourcing decisions, companies in virtually all sectors may in effect erode such a safe and enabling environment. The corporate responsibility to respect human rights entails a positive duty to support the States in which they operate to foster an environment that is conducive to the work of defenders. This requires not interfering with defenders' legitimate activities, but also assessing the status of civic freedoms as part of companies' human rights due diligence and proactively engaging with concerned Governments over the findings. Doing so is a precondition for a due diligence process that genuinely gauges and addresses the company's human rights risks to stakeholders.

89. Given that many States have recently made commitments on sustainable development, now is the time to "walk the talk" and ensure that no one can be killed or be threatened for the mere fact of speaking up against human rights abuses.

B. Recommendations

90. The Special Rapporteur calls upon States:

(a) To adopt legislation that creates due diligence obligations for companies registered in their jurisdictions and those of their subsidiaries, subcontractors and suppliers where there is a risk of human rights violations or abuses;

(b) To implement laws and policies which legitimize and guarantee the participation of communities and defenders in business-related decisions, including the rights of trade unions and the right to free, prior and informed consent;

(c) In consultation with defenders, to review their domestic regulatory framework to ensure that it, in substance or effect, does not impede the work of defenders to effectively and without risk of retaliation (including legal retaliation) address corporate human rights impacts;

(d) To adopt legislation requiring companies to publicly disclose information, including information on their corporate structure and governance, contracts, licences concessions, business relationships (investors, suppliers and other trading parties included), scientific information about company operations, and company filings;

(e) To publicly acknowledge, at the most senior levels of Government, the critical role that defenders play in helping to bring to the attention of States and business enterprises business-related impacts on human rights;

(f) To adopt national guidelines on human rights defenders and national action plans on business and human rights to ensure policy coherence and establish clear consequences when companies have been found to be linked to attacks against defenders;

(g) To promptly and impartially investigate all attacks against human rights defenders;

(h) To take all measures to provide for effective redress;

(i) To take measures, in policy and practice, to ensure that the security of defenders can be guaranteed at all times, including when accessing grievance mechanisms. Such measures should integrate intersectional, collective and holistic approaches.

91. The Special Rapporteur encourages companies:

(a) To assess the situation of civic freedoms and human rights defenders in the countries in which they operate, identifying gaps between international standards and national laws and practice;

(b) To ensure that their policy commitments on human rights reflect the critical role that defenders play in bringing human rights issues to their attention and address the risks they face in doing so;

(c) To actively engage with defenders and grass-roots civil society organizations in the elaboration of their human rights policies;

(d) To address the situation of and risks to company employees in their capacity as defenders, as well as external human rights defenders, and their opportunities to safely address business-related human rights grievances;

(e) To establish and implement processes for the remediation of adverse human rights impacts arising in any area of operations.

92. The Special Rapporteur calls upon investors and financial institutions:

(a) To include in ex ante impact assessments an analysis of the state of civic freedoms in the country of investment as well as the lender's track record of engaging with defenders;

(b) To put into place gap-filling measures through which shortcomings are documented, including training for all staff, and ensure that respect for engagement with defenders and other stakeholders is duly reflected in contractual requirements;

(c) To withhold approval for investment where impact assessments reveal serious threats to civic freedoms and defenders at the country or local level;

(d) To develop guidelines that clearly communicate that criticism of activities financed by the institutions is an important part of improving the impacts of development efforts and that reprisals against defenders will not be tolerated;

(e) To approve such guidelines by the most senior management of these institutions, including guidance and specific training for staff on how to effectively engage with complainants and ensure their safety;

(f) To disclose all end users of financial intermediary loans and ensure that they bring their projects into line with safeguard requirements and human rights, whichever sets the higher standard, or stop lending to high-risk clients.